

SENATE BILL No. 532

June 28, 2011, Introduced by Senators KOWALL, PAPPAGEORGE, MARLEAU, PROOS and WALKER and referred to the Committee on Natural Resources, Environment and Great Lakes.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 21313a, 21319a, and 21323 (MCL 324.21313a,
324.21319a, and 324.21323), section 21313a as amended by 1996 PA
116 and section 21319a as added and section 21323 as amended by
1995 PA 22.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 21313a. (1) ~~Beginning on the effective date of the~~
2 ~~amendatory act that added subsection (7), except~~ **EXCEPT** as provided
3 in subsection ~~(7),~~ **(6)**, and except for the confirmation provided in
4 section 21312a(2), if ~~a report is not completed or a~~ required
5 submittal under section 21308a, 21311a, or 21312a(1) is not
6 provided during the time required, the department may impose a

1 penalty according to the following schedule:

2 (a) Not more than ~~\$100.00~~ **\$50.00** per day for the first 7 days
3 that the report is late.

4 (b) Not more than ~~\$500.00~~ **\$250.00** per day for days 8 through
5 14 that the report is late.

6 (c) Not more than ~~\$1,000.00~~ **\$500.00** per day for each day
7 beyond day 14 that the report is late.

8 (2) ~~For~~ **SUBJECT TO SUBSECTION (6), FOR** purposes of this
9 section, in computing a period of time, the day of the act, event,
10 or default, after which the designated period of time begins to run
11 is not included. The last day of the period is included, unless it
12 is a Saturday, Sunday, legal holiday, or holiday, in which event
13 the period runs until the end of the next day that is not a
14 Saturday, Sunday, legal holiday, or holiday.

15 (3) The department may, upon request, grant an extension to a
16 reporting deadline provided in this part for good cause upon
17 written request 15 days prior to the deadline.

18 (4) The owner or operator may by contract transfer the
19 responsibility for paying fines under this section to a consultant
20 retained by the owner or operator.

21 (5) The department shall forward all money collected pursuant
22 to this section to the state treasurer for deposit in the emergency
23 response fund created in section 21507.

24 ~~— (6) An appeal of a penalty imposed under this section may be~~
25 ~~taken pursuant to section 631 of the revised judicature act of~~
26 ~~1961, Act No. 236 of the Public Acts of 1961, being section 600.631~~
27 ~~of the Michigan Compiled Laws.~~

1 (6) ~~(7)~~—A penalty shall not begin to accrue under this section
2 unless the department has first notified the person on whom the
3 penalty is imposed that he or she is subject to the penalties
4 provided in this section.

5 Sec. 21319a. (1) In accordance with this section, if the
6 department determines that there may be an imminent risk to the
7 public health, safety, or welfare, or the environment, because of a
8 release or threatened release, the department may require an owner
9 or operator to take action as may be necessary to abate the danger
10 or threat.

11 (2) The department may issue an administrative order to an
12 owner or operator requiring that person to perform corrective
13 actions relating to a facility, or to take any other action
14 required by this part. An order issued under this section shall
15 state with reasonable specificity the basis for issuance of the
16 order and specify a reasonable time for compliance.

17 (3) Within 30 days after issuance of an administrative order
18 under this section, a person to whom the order was issued shall
19 indicate in writing whether the person intends to comply with the
20 order.

21 (4) A person who, without sufficient cause, violates or fails
22 to properly comply with an administrative order issued under this
23 section is liable for ~~either or both of the following:~~

24 ~~—(a) A~~ A civil fine of not more than \$25,000.00 for each day
25 during which the violation occurs or the failure to comply
26 continues. A fine imposed under this subsection shall be based upon
27 the seriousness of the violation and any good faith efforts by the

1 violator to comply with the administrative order.

2 ~~—— (b) For exemplary damages in an amount at least equal to the~~
3 ~~amount of any costs of response activity incurred by the state as a~~
4 ~~result of a failure to comply with an administrative order but not~~
5 ~~more than 3 times the amount of these costs.~~

6 (5) A person to whom an administrative order was issued under
7 this section and who complied with the terms of the order who
8 believes that the order was arbitrary and capricious or unlawful
9 may petition the department, within 60 days after completion of the
10 required action, for reimbursement for the reasonable costs of the
11 action plus interest and other necessary costs incurred in seeking
12 reimbursement under this subsection. If the department refuses to
13 grant all or part of the petition, the petitioner may, within 30
14 days of receipt of the refusal, file an action against the
15 department in the court of claims seeking this relief. A failure by
16 the department either to grant or deny all or any part of a
17 petition within 120 days of receipt constitutes a denial of that
18 part of the petition which shall be reviewable as final agency
19 action in the court of claims. To obtain reimbursement, the
20 petitioner shall establish by a preponderance of the evidence that
21 the petitioner is not an owner or operator or that the action
22 ordered was arbitrary and capricious or unlawful, and in either
23 instance that costs for which the petitioner seeks reimbursement
24 are reasonable in light of the action required by and undertaken
25 under the relevant order.

26 Sec. 21323. (1) The attorney general may, on behalf of the
27 department, commence a civil action seeking any of the following:

1 (a) A temporary or permanent injunction.

2 (b) Recovery of all costs incurred by the state for taking
3 corrective action.

4 (c) Damages for the full injury done to the natural resources
5 of this state along with enforcement and litigation costs incurred
6 by the state.

7 (d) ~~A-SUBJECT TO SECTION 21313A,~~ A civil fine of not more than
8 \$10,000.00 for each underground storage tank system for each day of
9 noncompliance with a requirement of this part or a rule promulgated
10 under this part. A fine imposed under this subdivision shall be
11 based upon the seriousness of the violation and any good faith
12 efforts by the violator to comply with the part or rule.

13 (e) A civil fine of not more than \$25,000.00 for each day of
14 noncompliance with a corrective action order issued pursuant to
15 this part. A fine imposed under this subdivision shall be based
16 upon the seriousness of the violation and any good faith efforts by
17 the violator to comply with the corrective action order.

18 (f) Recovery of funds provided to the state from the United
19 States environmental protection agency's leaking underground
20 storage tank trust fund.

21 (2) A civil action brought under subsection (1) may be brought
22 in the circuit court ~~for the county of Ingham,~~ for the county where
23 the release occurred ~~,~~ or for the county where the defendant
24 resides.

25 (3) The state may, when appropriate, return to the United
26 States environmental protection agency any federal funds recovered
27 under this part. The state may also retain any federal funds

1 recovered under this part in a separate account for use in
2 implementing this part, with such use subject to approval of the
3 United States environmental protection agency.

4 Enacting section 1. This amendatory act does not take effect
5 unless all of the following bills of the 96th Legislature are
6 enacted into law:

7 (a) Senate Bill No. 528.

8
9 (b) Senate Bill No. 529.

10
11 (c) Senate Bill No. 531.

12
13 (d) Senate Bill No. 533.

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15 (e) Senate Bill No. 530.